

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

LANDSCAPE CONSULTANTS OF  
TEXAS, INC., and  
METROPOLITAN LANDSCAPE  
MANAGEMENT, INC.,

*Plaintiffs,*

v.

CITY OF HOUSTON, TEXAS, and  
MIDTOWN MANAGEMENT  
DISTRICT,

*Defendants.*

Civil Action No. 4:23-cv-03516

**PLAINTIFFS' SUMMARY OF  
MEMORANDUM IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

## **SUMMARY OF ARGUMENT**

Plaintiffs Landscape Consultants of Texas and Metropolitan Landscape Management are small, family-owned Houston-area landscaping companies. Local government contracts form the bulk of their business, including contracts with Defendants City of Houston and Midtown Management District (Midtown). For years—four decades in Houston’s case—both Defendants have operated race-based public contracting programs that put businesses like Plaintiffs at a significant disadvantage because of the race of their owners. Defendants’ programs blatantly violate both the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1981’s guarantee of the full and equal benefit of the laws regardless of race. This unlawful and unconstitutional racial discrimination must end immediately.

### **I. Defendants’ Programs Violate the Equal Protection Clause**

The evidence that Defendants’ programs do not satisfy strict scrutiny is overwhelming and irrefutable. First, neither Houston nor Midtown have a compelling interest to justify their use of racial classifications. Both Defendants openly admit that their programs do not remediate specific, identified instances of past discrimination that violated the Constitution or a statute. Both Defendants admit they know of no evidence of a prime contractor or one of their own employees discriminating against minority or women-owned businesses in the past five years. Both Defendants also admit that they know of no constitutional or statutory violations related to their public contracting programs in the past five years. Neither

Defendant has adopted any study that identifies discrimination within their public contracting programs' recent memory. Houston's program is based on an eighteen-year-old study; Midtown's program is based on nothing at all.

Neither program is narrowly tailored. Midtown relies on Houston's definition of a minority contractor; Houston's definition encompasses individuals from five continents and dozens of countries, though both Defendants admit that they have not identified individuals from any of those countries who have suffered actual discrimination in public contracting. The definition itself is both overinclusive and underinclusive, and neither Defendants' program has an end point—both hallmarks of a narrow tailoring failure.

Together, the lack of *any* evidence of discrimination in Defendants' public contracting programs and the complete absence of narrow tailoring within those programs mean this Court should grant Plaintiffs' motion for summary judgment and finally put an end to Defendants' unconstitutional racial discrimination.

## **II. Defendants' Programs Discriminate on the Basis of Race in Violation of 42 U.S.C. § 1981**

Defendants' intentional racial discrimination in violation of the Equal Protection Clause also violates Plaintiffs' right to the full and equal benefit of the law under § 1981. Section 1981's protections extend to everyone, regardless of race, leaving Plaintiffs to show only that Defendants intentionally discriminated against Plaintiffs due to their race, and that the discrimination concerned one of the activities

enumerated in the statute. And they can; Defendants' programs on their face exclude Plaintiffs due to the race of their owners while interfering with Plaintiffs' ability to contract with Houston and Midtown—an activity expressly protected by § 1981. Metropolitan lost a \$350,000 contract with Midtown because its bid did not receive 10 points reserved for minority-owned businesses. Landscape Consultants is forced to give 11 percent of its current contract with Houston to a minority-owned competitor, even though Landscape Consultants' own (mostly minority) employees can do the work themselves. In addition to violating the Equal Protection Clause, Defendants' race-based programs both run afoul of § 1981 and should be struck down.

Dated: November 29, 2024.

Anastasia Boden  
*Of Counsel*  
 Cal. Bar No. 281911  
 S.D. Tex. Bar No. 3495077  
 Joshua P. Thompson\*  
*Of Counsel*  
 Cal. Bar No. 250955  
 Pacific Legal Foundation  
 555 Capitol Mall, Suite 1290  
 Sacramento, CA 95814  
 Telephone: (916) 419-7111  
 Fax: (916) 419-7747  
 aboden@pacificlegal.org  
 jthompson@pacificlegal.org  
 \**Pro Hac Vice*

Respectfully submitted,  
s/ Erin E. Wilcox  
 Erin E. Wilcox  
*Attorney-in-Charge*  
 Cal. Bar No. 337427  
 S.D. Tex. Bar No. 3369027  
 Pacific Legal Foundation  
 555 Capitol Mall, Suite 1290  
 Sacramento, CA 95814  
 Telephone: (916) 419-7111  
 Fax: (916) 419-7747  
 ewilcox@pacificlegal.org

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2024, I served this document via the Court's electronic filing system to Defendants' counsel of record as follows:

Lori Yount  
Senior Assistant City Attorney  
Darah Eckert  
Senior Asst. City Attorney, General Litigation Section  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-368  
900 Bagby, 4th Floor  
Houston, TX 77002  
lori.yount@houstontx.gov  
darah.eckert@houstontx.gov

Ben Stephens  
Sandy Hellums-Gomez  
Jarett Dillard  
HUSCH BLACKWELL LLP  
600 Travis St., Suite 2350  
Houston, Texas 77002  
ben.stephens@huschblackwell.com  
sandy.gomez@huschblackwell.com  
jarett.dillard@huschblackwell.com  
*Counsel for City of Houston*

Brett J. Sileo  
Britton B. Harris  
Harris Hilburn P.L.L.C.  
1111 Rosalie  
Houston, Texas 77004  
bsileo@hhstxlaw.com  
bharris@hhstxlaw.com  
*Counsel for Midtown Management District*

s/ Erin E. Wilcox  
Erin E. Wilcox  
Pacific Legal Foundation